

MINUTES  
BOARD OF ADJUSTMENT  
June 4, 2009

THOSE IN ATTENDANCE:

Gary Soule, Chairman	Steve Askins, Building Official
Victor Cohen	Kevin O'Keefe, City Attorney
Rick Bliss	
Mel Disney	
Anne Bishop	

Chairman Soule called the meeting to order at 5:00 p.m. He welcomed everyone to the meeting, introduced himself and asked that the other members of the Board introduce themselves.

Chairman Soule stated that the members of this Board are appointed by the Mayor and approved by the City's Board of Aldermen and serve without monetary compensation. He indicated that a full compliment of the Board consists of five members and that four members must vote in favor of a variance in order for a variance to be granted. He stated that the applicant must demonstrate practical hardship with regard to the property in order to justify the granting of a variance. He then advised that this is a duly advertised, duly noted meeting and that the proceedings are of record.

Chairman Soule noted that there is a full compliment (5 members) of the Board this evening and that four (4) votes in the affirmative are needed in order for a variance to be granted.

Chairman Soule noted that there is one matter to be considered this evening and verified that the applicant was in attendance.

MINUTES

The minutes of the meeting of May 7, 2009 were presented for approval. The minutes were approved after having been previously distributed to each member.

APPEAL FROM RAY GALLARDO FOR THE PROPERTY AT 36 NORTH BRENTWOOD BOULEVARD (CITY COFFEE HOUSE)

Ray Gallardo, owner, was in attendance at the meeting. Also in attendance were Marilyn O'Dea, property manager and Mike Willaby of Patriot Sunroom (contractor).

Everyone wishing to speak this evening regarding the appeal was sworn in by the recording secretary.

Chairman Soule asked Steve Askins to provide an overview of the appeal.

Steve Askins explained that the applicant is requesting to construct an approximate 300 square foot addition to the front of the City Coffee House which would require one additional off-street parking space for which a variance is being sought.

Chairman Soule asked if the City had any exhibits to present with regard to this appeal.

City Attorney O'Keefe noted that the City had the following exhibits to offer into evidence:

- (a) City's Code of Ordinances (administrative notice of the Board of Adjustment Section 405.3630 (3));
- (b) Application for appeal;
- (c) City's files including staff report

Chairman Soule indicated that if there were no objections, the Exhibits would be received into evidence.

No objections were received.

Mr. Gallardo presented a site plan to the members. He indicated that he respectfully requests a variance of 1 parking space to allow the addition to be constructed. He stated that the building is currently 90% occupied and that typically, the parking spaces are not all used. He stated that he is happy that this expansion is needed as business is doing well. He stated that adding to the front is the only way to expand and that the patio is successful. He stated that he would like to enclose the patio so that the area can be used for dining during bad weather.

Chairman Soule asked Mr. Gallardo if he wanted the site plan to be marked as applicant's exhibit.

Mr. Gallardo replied "yes".

Rick Bliss noted that the plan sheet was included in the agenda packet submittal.

Mr. Gallardo presented an elevation rendering depicting the proposed addition. Photographs of the existing parking spaces that were taken during the daytime were also presented. He then referred to the letter discussing parking space allocation dated May 7<sup>th</sup> from Mary Brent Building Partnership.

Chairman Soule asked if that is the letter signed by Marilyn O'Dea, Property Manager.

Mr. Gallardo replied “yes”.

Chairman Soule indicated that a copy of that letter was also included in the agenda packet.

Mr. Gallardo indicated that there will be subtle differences with the façade of the addition so as to express their own identity.

Mr. Willaby stated that the patio is used 6 to 8 months of the year, but the addition will allow year-round dining.

Chairman Soule asked if this patio area is currently used for outdoor dining.

Mr. Gallardo replied “yes”. He stated it is primarily used on the weekends.

Mel Disney asked if the intent here is to get relief from the 1 additional required off-street parking space.

Mr. Gallardo replied “yes”.

Mel Disney commented that he understands that the property manager is willing to provide one additional space under the lease. He asked if that fulfills the requirement and therefore, no ruling by this Board would be necessary.

Steve Askins indicated that the building is non-conforming for the entire gross square footage and that the 2-level garage that was added later still falls short of required parking. He stated that since this is an expansion, it must provide 1 additional space on-site or within 500 feet.

Chairman Soule asked if an additional space was contracted by another building if that would satisfy zoning.

Steve Askins indicated only if the space was tied by a restrictive indenture and not separate.

Chairman Soule referred to a previous similar variance request by Oceana Bistro for which a variance was granted provided that 2 spaces be contracted.

Kevin O’Keefe stated that the concern Steve Askins expressed was that there is no excess parking within the structure to be allocated and that is why the requirement cannot be satisfied. He reminded everyone that the subject space (patio) is already used for dining (outdoor) which does not trigger a requirement for additional parking spaces.

Steve Askins agreed.

Chairman Soule asked if Oceano Bistro contracted with the owner across the street for their 2 spaces.

Steve Askins replied “yes”.

Ms. Marilyn O’Dea clarified that the 4 vacant spaces are truly vacant and indicated that she has set aside additional parking for suites that are not currently occupied.

Kevin O’Keefe stated that the City does not require a landlord to specify the number of spaces per tenant; the City requires spaces based on gross square footage.

Mel Disney commented that the parking is grandfathered and that the reason for this is due to the new construction.

Kevin O’Keefe concurred.

Mel Disney asked if another parking space would be required if another addition were to be constructed.

Kevin O’Keefe replied “yes”.

Chairman Soule asked if the Board were to approve this variance with the condition that an additional space be leased, if that condition would run with the property.

Kevin O’Keefe replied “yes”.

Chairman Soule asked if there would be an issue with a future tenant with regard to parking.

Kevin O’Keefe stated that there would only be an issue if another addition were sought.

Rick Bliss referred to a similar situation last month whereas Jason Jaggi had indicated that if an addition were less than 300 square feet, another parking space would not be needed (for further information, refer to minutes of May 7<sup>th</sup> meeting).

Steve Askins asked the Board to recall a recent e-mail from Jason Jaggi with regard to this issue in which 1 parking space/300 gross square feet is required, rounded to the nearest “whole” number. Steve stated that since 0 is not a whole number, the nearest whole number would be one (1), so no matter if an addition is 5 square feet, at least one parking space would be required, unless the building has enough spaces to meet or exceed code requirements.

Rick Bliss asked why a space could not be from another provider.

Steve Askins indicated that would not satisfy zoning because the space could go away.

Rick Bliss asked if this situation is similar to that of Oceano Bistro.

Steve Askins replied “yes”, if this Board requires the 1 additional space elsewhere as this Board did for Oceano Bistro.

Rick Bliss indicated that he would like to be consistent.

Kevin O'Keefe informed the members that there is no question of precedent as each case is based on its own merit and that one decision is not binding on another. He reminded the members that this request will enclose a space that is already used for dining.

Rick Bliss commented that most likely the busiest times are weekends and mornings when parking is not as contentious.

Kevin O'Keefe indicated that in terms of an indentured off-site space is that it has to be incapable of being cancelled.

A discussion regarding a possible solution and/or an amendment ensued. Kevin O'Keefe informed the members that an amendment to the variance request cannot be made, but that a condition of approval can be. He stated that they can opt to allow the addition (thereby approving the variance) and include a condition for a dedicated additional parking space on the property to run concurrently with the lease and that proof of such space be provided to the City and that a building permit for the addition not be released until such proof of parking space be received by the City.

Mr. Gallardo indicated that he accepts the suggested condition as Kevin stated.

Chairman Soule moved to approve the variance with the condition that a dedicated additional parking space be provided on the property to run concurrently with the lease, that proof of such additional parking space be provided to the City and that a building permit for the addition not be released until such proof be received by the City. The motion was seconded by Anne Bishop and unanimously approved by the Board.

Chairman Soule informed Mr. Gallardo that his variance request was granted.

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Being no further business for the Board of Adjustment, this meeting adjourned at 5:45 p.m.

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Recording Secretary